

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><i>* See below</i></u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

There is no fiscal impact with this item.

C. Departmental Fiscal Review: _____ *3-5-12*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

No fiscal impact as parking space already exist and there are no charges associated with the use

 OFMB *3/7/12*

 Contract Development and Control *3/13/12*
3-13-12 B. B. B.

B. Legal Sufficiency:

 Assistant County Attorney *3/14/12*

This Contract complies with our contract review requirements.

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.



ORIGINAL



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AGREEMENT**

SAP# 4600002613

This License Agreement, made and entered into _____, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County" and South Florida Water Management District, a public corporation of the State of Florida, hereinafter referred to as "Licensee".

WITNESSETH:

WHEREAS, Licensee has applied to conduct a commercial activity on Palm Beach County-owned property via the Application for Use of Palm Beach County-Owned Property For Commercial Activities (the "Application"), attached hereto as **Exhibit "A"** and incorporated herein by reference; and

WHEREAS, County is the owner of the real property and/or improvements described on the Application; and

WHEREAS, County is willing to grant Licensee a revocable license to use the property for the purposes described on the Application and hereinafter defined.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby permits Licensee to use the Premises, as hereinafter defined, upon the terms and conditions contained in this License Agreement.

1. Premises

The Premises, for the purpose of this License Agreement, is the real property and/or improvements identified on the Application. The Application, which may include special conditions of use as set forth in the Application, is hereby made a part of this License Agreement. The Licensee accepts the Premises in its "as is" condition. The County is in no way representing that the Premises is suitable for the Licensee's use and Licensee hereby accepts all risk relating to the use of the Premises.

Licensee shall use the Premises solely and exclusively for the use listed on the Application; Licensee shall not use, permit or suffer the use of the Premises for any other purpose whatsoever. Licensee shall be entitled to use the Premises only on the days and times listed on the Application. Licensee shall make no improvements, alterations or additions to the Premises. The use of the Premises by Licensee shall not interfere with County's use or operation of the Premises.



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Licensee shall immediately report to a County representative any condition or activity on the Premises which poses a risk to persons or property. If directed by the County, Licensee shall postpone its activity until the County notifies the Licensee that it is safe to resume the activity.

2. Length of Term and Commencement Date

The term of this License Agreement shall be for the period of time listed on the Application unless terminated earlier pursuant to the provisions of this License Agreement. This License Agreement shall commence upon execution by both parties (the "Commencement Date").

3. Licensee Fee

The Licensee shall pay the License Fee identified on the Application as determined by the County, together with applicable sales taxes thereon. Additional charges may accrue for custodial, set-up or special requirements as indicated on the Application.

4. Termination

The County may terminate this License Agreement at any time upon written notice to the Licensee. Upon Licensee's receipt of written notice from the County, this License Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination. Licensee may terminate this License Agreement upon written notice to the County. Notwithstanding such termination, Licensee shall remain obligated to surrender and restore the Premises as required by this License Agreement and for any obligations arising prior to such termination.

5. Waste or Nuisance

Licensee shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect County's fee interest in the Premises. Licensee shall keep the access to the Premises, the parking areas, driveways and other contiguous areas to the Premises free and clear of obstruction.

6. Governmental Regulations

Licensee shall, at Licensee's sole cost and expense, secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in



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force, pertaining to Licensee or its use of the Premises, and shall faithfully observe in the use of the Premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force and all applicable association/governing body rules and regulations pertaining to the Licensee's use of the Premises. Licensee shall not store or dispose any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents, including any petroleum products, used or produced in Licensee's activity, on the Premises or in any manner not permitted by law. Licensee shall indemnify, defend and save County, its agents, officers, and employees harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Licensee's failure to perform its obligations specified in this Section. Licensee's indemnification obligations set forth in the foregoing shall survive termination of this License Agreement.

7. Non-Discrimination

Licensee assures and certifies that it shall comply with Title VII of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation, disability, or gender identity or expression, with respect to their use of the Premises.

8. Surrender of Premises

Upon termination of each use of the Premises by the Licensee, Licensee, at its sole cost and expense, shall remove all of its personal property from the Premises and shall surrender the Premises to the County in at least the same condition the Premises were in at the start of each period of use.

9. Maintenance and Repair

County shall conduct all maintenance or repairs to the Premises. In the event that Licensee damages the Premises, County shall complete the necessary repairs and Licensee shall reimburse County for all expenses incurred by County in doing so.

10. Indemnification of County

To the extent permitted by law, Licensee shall indemnify, defend and save County, its agents, officers, and employees harmless from and against any and all claims, actions, damages, liability and expense, including attorney fees and costs, whether at trial or appellate level or otherwise, in connection with loss of life, personal injury and/or damage to or destruction of property arising from or out of



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the occupancy or use by Licensee of the Premises or any part thereof, or any act, error or omission of Licensee, its agents, contractors, employees or invitees. In case County shall be made a party to any litigation commenced against Licensee or by Licensee against any third party, then Licensee shall protect and hold County, its agents, officers, and employees harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. This Section shall survive termination of this License Agreement. Nothing contained herein shall be construed as a waiver of sovereign immunity or the statutory limits of liability set forth in Section 768.28, Florida Statutes.

11. Insurance

A. For Non-Government Entities

Licensee shall, during the entire Term hereof, keep in full force and effect General Liability Insurance in an amount not less than \$1,000,000 per occurrence combined single limit bodily injury and property damage liability. The General Liability policy shall include coverage for Premises - Operations, Contractual and Product Liability, Independent Contractors, Contractual Liability and Personal Injury, and Broad Form Property Damage Liability coverages.

Licensee shall add the County to the commercial general liability as an "additional insured" with a CG 2026 Additional Insured-Designated Person or Organization endorsement or similar endorsement. The additional insured endorsement shall read "Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its officers, employees and agents, c/o Facilities Development & Operations Department". The additional insured endorsement shall provide coverage on a primary basis. Such insurance shall be with an insurance company licensed to do business in the State of Florida and subject to the approval of the County's Risk Management Department. A Certificate of Insurance evidencing such insurance coverage shall be provided to the County at least fifteen (15) days prior to the Commencement Date, such Certificate indicating at least ten (10) days prior notice of cancellation or adverse material change in coverage.

In no event shall the limits of said insurance policies be considered as limiting the liability of Licensee under this License Agreement. In the event that Licensee shall fail to obtain and maintain in full force and effect any insurance coverage required to be obtained by Licensee under this License Agreement, County shall have the right of injunction, or County may immediately



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terminate this License Agreement, notwithstanding any provisions herein to the contrary. Notwithstanding the foregoing, Licensee shall and does nevertheless indemnify, defend and hold County harmless from any loss or damage incurred or suffered by County from Licensee's failure to maintain such insurance.

In the event of loss or damage to the Premises, the Licensee shall look solely to any insurance in its favor without making any claim against the County, and the Licensee shall obtain and deliver to the County, from the insurer under each policy of such insurance, an agreement whereby such insurer waives subrogation of any claim against the County for loss or damage within the scope of the insurance, and the Licensee, for itself and its insurers, waives all such insured claims against the County.

B. For Government Entities

If the Licensee is a government entity, Licensee acknowledges, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, that Licensee is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of \$100,000 per person and \$200,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature.

In the event that Licensee maintains third-party commercial general liability in lieu of exclusive reliance on self-insurance under Section 768.28, Florida Statutes, Licensee shall maintain said insurance policy at limits not less than \$500,000 each occurrence. Licensee shall add the County to the commercial general liability as an "additional insured" with a CG 2026 Additional Insured-Designated Person or Organization endorsement or similar endorsement. The additional insured endorsement shall read "Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its officers, employees and agents, c/o Facilities Development & Operations Department. The additional insured endorsement shall provide coverage on a primary basis.

If requested, Licensee shall provide a statement or certificate of insurance evidencing insurance, self-insurance and/or sovereign immunity status which the County agrees to recognize as acceptable for the above mentioned coverages.



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Compliance with the foregoing insurance requirements shall not relieve Licensee of its liability and obligations under this License Agreement.

Licensee's self-insurance or general liability insurance shall be primary with respect to any coverage afforded to or maintained by the County.

12. Utilities

The County shall be solely responsible for, and promptly pay to the utility or other provider of such service, all charges and assessments for water, gas, electricity, trash collection and removal or any other utility used or consumed on the Premises unless the responsibility for utilities is listed by the County as a special condition of use on the Application. In no event shall County be liable for an interruption or failure in the supply of any utilities to the Premises.

13. Rules of Premises

Licensee shall strictly adhere to the Rules that govern the Premises as set forth in the Application, at all times. Licensee also acknowledges that any violation of the Rules governing the use of the Premises may result in the suspension or termination of this License Agreement.

14. Subcontracting

The Licensee may not subcontract or assign any rights, responsibilities or obligations of this License Agreement.

15. Entire Agreement

This License Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and Licensee. All representations, either oral or written, shall be deemed to be merged into this License Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this License Agreement shall be binding upon County or Licensee unless reduced to writing and signed by them.

16. Notices

All notices and elections (collectively, "Notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any Notice



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shall be the date of delivery of the Notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which Notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to the County at:
FDO Business & Community Agreements Manager
2633 Vista Parkway
West Palm Beach, FL 33411
Fax: (561) 233-0206

with a copy to:

Palm Beach County
Department of Parks and Recreation
Attn: Director
2700 Sixth Avenue South
Lake Worth, FL 33461
Fax: (561) 963-6734

AND

Palm Beach County
Attn: County Attorney
301 North Olive Avenue
West Palm Beach, FL 33401
Fax: (561) 355-6461

- (b) If to the Licensee at:

South Florida Water Management District
Procurement Department
3301 Gun Club Road
West Palm Beach, FL 33406
Fax: (561) 682-5009



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Either party hereto may change the address for service of Notices required or permitted hereunder upon three (3) days prior written notice to the other party.

17. Severability

If any term or provision of this License Agreement shall be held invalid or unenforceable, the remainder of this License Agreement shall not be affected and every other term and provision of this License Agreement shall be deemed valid and enforceable to the extent permitted by law.

18. WAIVER OF JURY TRIAL

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTERCLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, IN CONNECTION WITH THIS LICENSE AGREEMENT.

19. Governing Law and Venue

This License Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in a state court of competent jurisdiction in Palm Beach County.

20. Recording

Licensee shall not record this License Agreement, or any memorandum or short form thereof in the public records of Palm Beach County. Any such recording shall constitute a default hereunder and shall result in immediate termination of this License Agreement.

21. Time of Essence

Time is of the essence with respect to the performance of every provision of this License Agreement in which time of performance is a factor.

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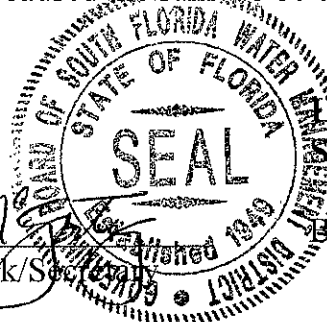


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IN WITNESS WHEREOF, County and Licensee have executed this License Agreement, or have caused the same to be executed as of the day and year first above written.

ATTEST:



LICENSEE:

South Florida Water Management District

By: Jackie M. [Signature]
District Clerk/Secretary

By: Dorothy A. Bradshaw [Signature]
Dorothy A. Bradshaw, Procurement Bureau Chief

WITNESSES:

By: [Signature]
Witness Signature

2/24/12
Date of Execution by SFWMD

Alejandro Quintanilla
Print Witness Name

SFWMD Procurement Approved:
By: [Signature]

By: [Signature]
Witness Signature

Date: 2/17/12

Marianna Caminiti
Print Witness Name

SFWMD Office of Counsel Approved:
By: [Signature]

ATTEST:

Date: 2/24/12

SHARON R. BOCK
CLERK & COMPTROLLER
By: _____
Deputy Clerk

PALM BEACH COUNTY, a Political
Subdivision of the State of Florida
By: _____
Shelley Vana, Chair

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**
By: [Signature]
County Attorney

**APPROVED AS TO TERMS AND
CONDITIONS**
By: [Signature]
Director, Facilities Development & Operations



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Exhibit "A"

APPLICATION FOR USE OF PALM BEACH COUNTY-OWNED PROPERTY FOR COMMERCIAL ACTIVITIES

This application may be used to apply for a permit to use a Palm Beach County-owned property for commercial activities. The application must be submitted at least twenty (20) days prior to the proposed date of the requested use. Please send the completed application to:

Facilities Development & Operations Department (FDO)
2633 Vista Parkway
West Palm Beach, FL 33411-5603
ATTN: Director
Telephone: 561-233-0215
Fax: 561-233-0206

Upon approval of the application by FDO, the property will be reserved and the user will be informed of any Special Conditions of Use and fees for the Use as defined herein. Any fees are due prior to the Use.

1. USER/APPLICANT

Name of Applicant: South Florida Water Management District

Name of Organization/Licensee: _____

Address: 3301 Gun Club Road, West Palm Beach, FL 33406

Telephone: 561-686-8800

Name and Title of Authorized Representative: Dorothy A. Bradshaw,

Procurement Bureau Chief

Type of Organization: Public Agency Non-Profit _____ Other (Specify) _____

2. REQUESTED PROPERTY

Name and Address of Property Requested (Include property address, name of



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facility, room or area requested, as applicable): 75 parking spaces in the locations shown on Attachment "A" attached hereto and made a part hereof, including the right of entry, ingress and egress to Lake Lytal Park as legal described on Attachment "B" attached hereto and made a part hereof.

3. USE

Nature of Use (Please check one): Training Educational

Recreational Meeting Non-Profit Event Other

Does Use include the sale of Goods and/or Services? Yes No

Will User charge an Admission Fee and/or Participation Fee? Yes No

Amount to be charged for Admission Fee and/or Participation Fee: N/A

Estimated Number of Participants (Include Staff/Volunteers): X

Detailed Description of the Nature and Purpose of Use (Attach additional sheets, as necessary): Temporary use of up to 75 parking spaces at Lake Lytal Park for the exclusive use of parking for SFWMD employees.

4. FOOD AND BEVERAGE

Use includes food and/or beverages? Yes No

Use includes the sale, use or consumption of alcohol? Yes No

5. DATE

Date(s) of Use: 3/18/12 – 3/17/13, excluding weekends and County holidays.

Time(s) of Use: 7:00 a.m. through 5:00 p.m.

6. EQUIPMENT

Amount of Equipment Requested: Tables N/A Chairs N/A

All equipment contained or used within the property is subject to approval by FDO.

7. ADDITIONAL USERS

Organization(s) participating in use, if other than Applicant (Attach additional pages to list more organizations/individuals): N/A



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Organization Name: _____

Address: _____

Phone: _____ Fax: _____ E-mail _____

Status: Non Profit _____ Profit _____ Other _____ (Explain)

Contact Person: _____

8. VENDORS

List all vendors of the event: N/A

9. ADVERTISING

Will the event be advertised to the public? Yes N/A No N/A

If yes, by what means?: Radio _____ TV _____ Internet _____ Other _____

TO BE PROVIDED BY FDO (After evaluation of the Application):

1. FEES

_____	License Fees	\$	<u>N/A</u>
_____	Custodial Fees	\$	<u>N/A</u>
_____	Service Fees	\$	<u>N/A</u>
_____	Other		<u>N/A</u>

2. Special Conditions of Use: See Special Conditions of Use set forth on Attachment "C" attached hereto and made a part hereof.

By signing below, I certify that I have the authority to represent and obligate the Licensee and I agree on behalf of the Licensee to comply with the terms of this Application.

Signature of Authorized Representative

Date: _____

Dorothy A. Bradshaw, Procurement Bureau Chief
Printed Name and Title of Authorized Representative



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APPROVED BY:

Director, Facilities Development & Operations Department

Date: _____

OTHER DEPARTMENTAL REVIEW (If necessary):

Signature of Director of Department

Date: _____



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Attachment "A"

Lake Lytal Park
Temporary Employee Parking Area





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Attachment "B"

Lake Lytal Park Legal Description

The West 315 feet of Tract 4, Block 1, and all of Tract 1, Block 2, Palm Beach Plantations, Plat No. 1, according to Plat Book 10, Page 20, Public Records of Palm Beach County, LESS the following parcel more particularly described as beginning at a point, which is the intersection of the East line of the West 315 feet of Tract 4, Block 1, with the North right of way line of Gun Club Road, thence West along said right of way line a distance of 275 feet, thence North at right angles to same, a distance of 260 feet, thence East at right angles to the preceding course, a distance of 275 feet, thence South along the East line of the West 315 feet of Tract 4, Block 1, to the Point of Beginning; containing 24.83 acres, more or less.



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Attachment "C" Special Conditions of Use

1. Parking spaces shall be on a first come first served basis.
2. Applicant shall not use the Premises in any manner which, in the opinion of the County, may tend to interfere with County's use of the Premises or may tend to cause a hazardous condition to exist.
3. Applicant shall: (i) remove any litter from the Premises on a daily basis and (ii) shall keep the Premises clean and clear of litter so as to prevent it from becoming unsightly.
4. Applicant shall not construct or erect any permanent or temporary building, structure, fixture, fence, shelter, attachment or other improvement upon the Premises.
5. County reserves the right to enter the Premises at any time for any purpose.
6. Licensee hereby acknowledges that County is the owner of fee simple title to the Premises and agrees never to claim any interest or estate of any kind by virtue of this License Agreement.
7. Applicant expressly covenants and agrees that the Premises shall not be subject to any encumbrances by any mortgage or lien, nor shall County be liable to satisfy any indebtedness that may result from Applicant's operation incurred by Applicant in any manner whatsoever.
8. If Applicant remains in possession of the Premises, or any part thereof, after any termination of the License Agreement, no tenancy or interest in the Premises shall result there from, but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction and removal and shall upon written demand pay to the County the cost of any such eviction and removal as may be incurred by County.
9. The following shall be added to Section 4 of the License Agreement:

Notwithstanding anything contained to the contrary herein, County shall provide Licensee with at least thirty (30) days advance written notice prior to County's exercise of its rights to terminate this License Agreement; provided however, in the event that SFWMD violates any of the terms and conditions of the License Agreement, County may



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at its option, require SFWMD to cease use of the Premises upon reasonable notice under the circumstances.

10. Section 6 of the License Agreement shall be modified so that: (i) SFWMD's obligations as set forth therein are only made to the extent permitted by law and (ii) nothing contained therein shall be construed as a waiver of sovereign immunity or the statutory limits of liability set forth in Section 768.28 Florida Statutes.

11. The parties hereby agree that the terms of Section 6 of the License Agreement are in addition to the terms of Section 10 of the License Agreement and shall not be construed to be inconsistent therewith.

12. Section 8 of the License Agreement shall be deleted in its entirety and replaced with the following:

Surrender of Premises

Upon termination of each use of the Premises by the Licensee, Licensee, at its sole cost and expense, shall remove all of its personal property from the Premises and shall surrender the Premises to the County in at least the same condition the Premises were in at the start of each period of use, reasonable wear and tear excepted. Licensee shall remove all personal property placed by it on the Premises and shall repair and restore and save County harmless, to the extent permitted by law, from all damage caused by such removal. If such property is not so removed by Licensee, then County shall have the right to take possession of and appropriate to itself, without any payment or offset hereof, any property of Licensee. County shall have the right to make such removal at Licensee's sole cost and expense, the amount of which, Licensee agrees to pay to County upon written demand.

13. The first sentence of Section 15 of the License Agreement shall be deleted and replaced with the following: This License Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between the County and Licensee concerning Licensee's use of the Premises.